

# **EXHIBIT 41**

Message

HK18482

**Griffin, Deborah S (BOS - X72044)**

**From:** Griffin, Deborah S (BOS - X72044)  
**Sent:** Tuesday, November 11, 2003 4:01 PM  
**To:** 'THOMAS McEnaney'  
**Cc:** 'sbeatty@kemperinsurance.com'; 'lantuono, Joseph'; 'Rpgarrity@aol.com'  
**Subject:** FW: Notice to Proceed

Please see the message below from Fontaine's counsel. I expect to deliver the signed completion agreement and bonds to you tomorrow. If you already know what action the town will take, please advise.

Deborah S. Griffin  
Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
617-305-2044  
fax 617-523-6850  
deborah.griffin@hklaw.com

-----Original Message-----

**From:** Rpgarrity@aol.com [mailto:Rpgarrity@aol.com]  
**Sent:** Tuesday, November 11, 2003 3:49 PM  
**To:** deborah.griffin@hklaw.com  
**Cc:** tom.l@fontainebros.com  
**Subject:** Notice to Proceed

Deborah:

I talked to Chris Fontaine. He will be sending me the executed agreements by overnight mail with the P&P, bonds. Fontaine remains very concerned with getting a Notice to Proceed ASAP, otherwise the contract price will be effected and potentially the contract completion dates. Fontaine advises that they must get a Notice to Proceed from the Town by November 14th, otherwise Fontaine will reserve its right to request additional compensation and potentially time extensions and, depending upon the extent of any delay in the issuance of the Notice to Proceed, may decide not to proceed with the contract. Fontaine does not want to enter a binding commitment without a start date. I will deliver the documents to you in the morning, with a cover letter outlining Fontaine's reservations. Any questions, please call (617)367-3990.

11/14/2003

## **EXHIBIT 42**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 03-40266 FDS

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Plaintiff

v.

TOWN OF NORTH BROOKFIELD,

Defendant

DEFENDANT'S VOLUNTARY  
DISCLOSURE PURSUANT TO  
FED. R. CIV. P. 26(a)(1)(A), (B),  
(C) AND (D)

Now comes the defendant in the above-captioned matter, pursuant to Fed.R.Civ.P. 26(a)(1)(A), (B) and (D) respectively, and hereby disclose the identities of individuals likely to have discoverable information that the defendant may use to support its defenses, as well as documents, data compilations and tangible things in its possession, custody and control that the defendant may use for that purpose. The defendant further affirms the absence of insurance with respect to this action.

A. Disclosure Pursuant To Fed.R.Civ.P. 26(a)(1)(A)

1. Defendant, through its authorized agents and officers, including but not limited to:

Ms. Leslie Scott Burton  
Town Administrator  
North Brookfield Town House  
185 North Main Street  
North Brookfield, MA 01535

Members of the Board of Selectmen  
North Brookfield Town House  
185 North Main Street  
North Brookfield, MA 01535

B. Disclosure Pursuant To Fed.R.Civ.P.26(a)(1)(B)

The Town will make all of its public records relating to the North Brookfield Jr./Sr. High School Project available for inspection by plaintiff's counsel. The documents, which are too voluminous to list separately, include project plans, specifications, change orders, contracts, correspondence, meeting minutes, payment requisitions and all other non-privileged public records relating to this matter.

C. Disclosure Pursuant To Fed.R.Civ.P.26(a)(1)(C)

The Town claims damages in the amounts specified herein. The Town will make all of its public records relating to the Town's damages on the North Brookfield Jr./Sr. High School Project available for inspection by plaintiff's counsel.

1. Compensatory Damages

The Town seeks the following compensatory damages from the plaintiff/defendant-in-counterclaim, American Manufacturers Mutual Insurance Company ("AMMIC"):

Contract deficiency:	\$150,439.72
Additional design/project management costs:	\$674,607.24
Liquidated Damages:	\$655,000.00
Roof Repair:	\$ 6,336.50
Keyspan:	<u>\$ 16,719.40</u>
Total:	\$1,503,102.86

The Town also asserts that it is entitled to retain funds paid to it by AMMIC under a reservation of rights, which total \$784,157.80.

2. Legal Costs

The Town seeks compensation for its reasonable costs and expenses, including legal fees, incurred relative to this matter.

3. Punitive Damages

The Town seeks treble damages from AMMIC pursuant to G.L. c.93A and G.L. c.176D. The Town reserves the right to amend this disclosure as more information becomes available during discovery.

D. Disclosure Pursuant to Fed.R.Civ.P.26(a)(1)(D)

None.

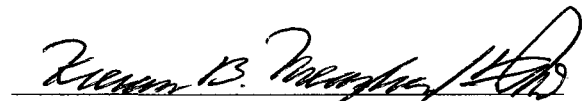
TOWN OF NORTH BROOKFIELD

By its attorneys,



David J. Doneski (BBO# 546991)  
Thomas W. McEnaney (BBO #629130)  
Kopelman and Paige, P.C.  
Town Counsel  
31 St. James Avenue  
Boston, MA 02116  
(617) 556-0007

Co-counsel:



Kieran B. Meagher, Esq. (BBO# 340920)  
92 Montvale Avenue  
Stoneham, MA 02180  
(781) 246-1101

225026/21202/0019

## **EXHIBIT 43**



# **PROJECT MANUAL**

**VOLUME 1 OF 2 - SPECIFICATIONS**

**NORTH BROOKFIELD JR./SR. HIGH SCHOOL**

**NORTH BROOKFIELD, MASSACHUSETTS**

**15 January 2002**

**(Revised from original issue of 12 September 2001)**

**ARCHITECTS AND PROJECT MANAGERS**

**Dore and Whittier, Inc.**

**ASSOCIATE ARCHITECTS**

**PDT Architects, Inc.**

**CIVIL ENGINEERS AND LANDSCAPE ARCHITECTS**

**The Berkshire Design Group, Inc.**

**STRUCTURAL ENGINEERS**

**Engineers Design Group, Inc.**

**MECHANICAL, PLUMBING, ELECTRICAL AND FIRE PROTECTION**

**Garcia, Galuska, DeSousa, Inc.**

**EQUIPMENT AND FURNISHINGS**

**John A. Crisafulli and Associates**

**KITCHEN EQUIPMENT**

**Crabtree-McCrath Associates**

**ENVIRONMENTAL**

**ATC Associates Inc.**

**TECHNOLOGY**

**CCC Research**

**BID DOCUMENTS (REVISED)**

RL-610



# **PROJECT MANUAL**

## **NORTH BROOKFIELD JR./SR. HIGH SCHOOL**

### **NORTH BROOKFIELD, MASSACHUSETTS**

**15 January 2002**

**(Revised from Original Issue of 12 September 2001)**

This Project Manual is presented in two volumes:

**Volume 1** contains BIDDING DOCUMENTS, CONTRACT FORMS, CONDITIONS OF THE CONTRACT, and SPECIFICATION DIVISIONS 1 THROUGH 16.

**Volume 2** contains GENERAL INFORMATION, NOTES, LEGENDS, and DETAILS. This volume is divided into sections, each section representing a category of information. Bidders should become familiar with the content of this volume prior to a detailed analysis of the large format drawings. Not all of the information included in this volume has been referenced from the large format drawings.

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**BID DOCUMENTS (Revised)**

MDW 1420

## **INVITATION FOR BIDS**

**NORTH BROOKFIELD JR./SR. HIGH SCHOOL**  
North Brookfield, Massachusetts

**INVITATION FOR BIDS**

The Town of North Brookfield, the Awarding Authority, invites sealed bids for the construction of the new North Brookfield Jr./Sr. High School, North Brookfield, Massachusetts. The project involves all phases of building construction and includes related sitework, asbestos abatement, and demolition of the existing school building. Estimated construction cost is \$10,800,000 dollars.

Bidder selection, procedures and contract awards shall be in conformity with applicable statutes of the Commonwealth of Massachusetts. State mandated prevailing wage rates must be paid in accordance with M.G.L. Chapter 149, Sections 26 to 27D inclusive.

Drawings, Specifications, Contract Documents and instructions may be examined at the Office of the Superintendent of Schools, 10 New School Drive, North Brookfield, Massachusetts, 01535 after 12:00 noon, 15 January 2002. Copies of these documents may be obtained by eligible bidders from Blueprints, Etc., 20 Farrell Street, South Burlington, VT 05403 (phone 802-865-4503, FAX 802-865-0027) on payment of a \$300.00 deposit which is 100% refundable on return of said documents in good condition not later than ten days after the opening of general bids. Drawings and Specifications will be mailed for a non-refundable \$50.00 mailing charge.

Filed Sub-Bids shall be required for the following sub-trades:

- |     |  |               |
|-----|--|---------------|
| 1.  | <u>Masonry</u>   | Section 04200 |
| 2.  | <u>Miscellaneous Metals</u>  | Section 05500 |
| 3.  | <u>Waterproofing, Dampproofing, and Joint Sealants</u><br>(Including the following sections) |               |
|     | Waterproofing and Dampproofing   | Section 07100 |
|     | Joint Sealants   | Section 07900 |
| 4.  | <u>Roofing, Flashing and Sheet Metal</u><br>(Including the following sections)               | Section 07500 |
|     | Roofing Accessories  | Section 07800 |
| 5.  | <u>Aluminum Entrances, Doors, and Window Systems</u>   | Section 08400 |
| 6.  | <u>Glass and Glazing</u>   | Section 08800 |
| 7.  | <u>Tile</u>  | Section 09300 |
| 8.  | <u>Acoustical Ceiling System</u>   | Section 09510 |
| 9.  | <u>Resilient Flooring</u>  | Section 09650 |
| 10. | <u>Painting</u> (including the following sections)   |               |
|     | Special Wall Coatings  | Section 09850 |
|     | Painting   | Section 09900 |
| 11. | <u>Fixed Casework and Equipment</u>  | Section 11600 |
| 12. | <u>Hydraulic Elevator</u>  | Section 14225 |
| 13. | <u>Fire Protection</u>   | Section 15300 |
| 14. | <u>Plumbing</u>  | Section 15400 |
| 15. | <u>HVAC</u>  | Section 15500 |
| 16. | <u>Electrical</u>  | Section 16000 |
| 17. | <u>Communications Cabling and Technology Systems</u>   | Section 16740 |

OK MPE  
OK MPE

The Awarding Authority will receive sealed Filed Sub-Bids for the listed sub-trades until 2:30 PM, 6 February 2002, at the North Brookfield Elementary School, North Brookfield, Massachusetts, at which time and place they will be publicly opened, read aloud and recorded for presentation to the Awarding Authority.

If mailed, Sub-Bids should be sent to:

**Awarding Authority**

**Town of North Brookfield  
Office of the Superintendent of Schools  
10 New School Drive  
North Brookfield, MA 01535**

and received no later than the date and time specified above.

Each Filed Sub-Bid must include the following:

1. Completed Form for Sub-Bid
2. Bid Deposit not less than five per cent (5%) of the bid amount and not less than \$1,000, made payable to the **Town of North Brookfield** (See Instructions to Bidders for acceptable forms of Bid Deposit)

Each Filed Sub-Bid, bid deposit, and required accompanying documents shall be enclosed in a sealed envelope with the following plainly marked on the outside:

1. SUB-BID SECTION NUMBER(S)
2. SUB-TRADE NAME
3. SUB-BIDDER'S NAME AND BUSINESS ADDRESS

Sealed General Bids for the project will be accepted from eligible bidders until **2:30 PM, 20 February 2002** at the **North Brookfield Elementary School, North Brookfield, Massachusetts**, at which time they shall be publicly opened, read aloud and recorded for presentation to the Awarding Authority.

If mailed, General Bids should be sent to:

**Awarding Authority  
Town of North Brookfield  
Office of the Superintendent of Schools  
10 New School Drive  
North Brookfield, MA 01535**

and received no later than the date and time specified above.

General Bidders must be certified by the Division of Capital Asset Management (DCAM) in the category of General Contracting for the dollar amount of this project.

Each General Bid must include the following:

1. Completed Form for General Bid
2. Bid Deposit not less than five per cent (5%) of the bid amount, made payable to the **Town of North Brookfield** (See Instructions to Bidders for acceptable forms of Bid Deposit)
3. Completed DCAM (DCPO) Form CQ7
4. Completed DCAM (DCPO) Form CQ3

Each General Bid, Bid Deposit, and required accompanying documents shall be enclosed in a sealed envelope with the following plainly marked on the outside:

1. **GENERAL BID FOR NORTH BROOKFIELD JR./SR. HIGH SCHOOL**
2. BIDDER'S NAME AND BUSINESS ADDRESS

The Awarding Authority reserves the right to waive any informalities, and to reject any or all General Bids if it determines such to be in the public interest, and to reject any or all General Bids if it determines such to be in the public interest, and to reject any or all Sub-Bids for any Sub-Trade if it determines that such Sub-Bid does not represent the Sub-Bid of a person competent to perform the work as specified, or if such Sub-Bid is not one which conforms with Sections 44A through 44J inclusive of Chapter 149 of the General Laws as amended, or if such Sub-Bid is on a form not completely filled in, or is incomplete, conditional or obscure, or contains an addition not called for.

No bid may be withdrawn prior to the expiration of the statutory period after the opening of General Bids for the making of awards and completion of the process of entering into contracts.

*NORTH BROOKFIELD JR./SR. HIGH SCHOOL*

*INVITATION FOR BIDS*  
Page 3

A pre-bid conference will be held at **The North Brookfield Elementary School at 2:00 PM, 22 January 2002.**

**The Town of North Brookfield** is an equal employment opportunities, anti-discrimination and affirmative action program employer.

The Awarding Authority encourages prospective bidders to employ qualified local labor should the bidders be awarded work pursuant to the bid procedure.

END OF SECTION

- b. Bid deposits of the three (3) lowest responsible and eligible sub-bidders for each sub-trade shall be retained until the execution and delivery of a General Contract.
  - c. If all sub-bids are rejected in a sub-trade, all bid securities received in that sub-trade will be returned forthwith.
  - d. If a selected Sub-Bidder fails to perform his agreement to execute a Subcontract with the General Bidder selected as the General Contractor, contingent upon the execution of the General Contract; and if requested so to do in the General Bid by such General Bidder, to furnish a Performance and Payment Bond as stated in his Sub-Bid, the bid deposit of such Sub-Bidder shall become and be the property of the **Town of North Brookfield** as liquidated damages.
- 4. No sub-bids may be withdrawn prior to the expiration of the statutory period after the opening of the General Bids for the making of awards and completion of the process of entering into contracts.
  - 5. The Awarding Authority may reject as informal, bids which are incomplete, conditional, or obscure, or which contain additions not called for, erasures not properly initialed, alterations, or irregularities of any kind; or the Awarding Authority may waive such informalities within the general laws of the Commonwealth of Massachusetts.
  - 6. If a General Bidder customarily performs with his own employees any sub-trade or trades listed in Item 2 of the proposal form, he may submit his name and an amount for such work as a Sub-Bid on the form herein required of the regular Subcontractors, and he shall also submit his name and amount for such work in his own bid for general work under Item 2. Such submission by selected Contractor shall be considered on a par with Sub-Bids filed with the Owner by Sub-Bidders who customarily perform such work. No such Sub-Bids by a Contractor shall be considered, however, unless he can show to satisfaction of the Owner that he does customarily perform such work and is qualified to do the character of work required by the specifications.

#### I. CONTRACT AWARDS

- 1. The Awarding Authority reserves the right to waive any informalities in or to reject any or all General Bids if it be in the public interest to do so.
- 2. The Awarding Authority also reserves the right to reject any sub-bid if it determines that such sub-bid does not represent the bid of a person competent to perform the work as specified or if less than three sub-bids are received for a sub-trade and bid prices are not acceptable without further competition.
- 3. If the Contract is to be awarded, it will be to the lowest responsible and eligible Bidder for the Base Bid and Alternates selected, except in the event of substitution as provided under M.G.L. Chapter 149, Sections 44E and 44F, in which cases the procedure as required by said Sections shall govern the award of the Contract.
- 4. The term "lowest responsible and eligible bidder" as used herein shall mean the General Bidder whose bid is the lowest of those Bidders demonstrably possessing the skill, ability, and integrity necessary for the faithful performance of the work, and who meets the requirements for Bidders set forth in M.G.L. Chapter 149, Sections 44A-H and not debarred from bidding under M.G.L. Chapter 149, Section 44C; and who shall certify that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.
- 5. If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within thirty (30) days (Saturdays, Sundays, and holidays excluded) after the date of the bid opening.

#### J. PERFORMANCE AND OTHER BONDS

- 1. A Performance Bond and a Labor and Material Payment Bond, each in the sum of the full amount of the bid, on the forms set forth herein from a surety company licensed to do business in the



Commonwealth of Massachusetts and satisfactory to the Awarding Authority as surety shall be required for the faithful performance of the contract. Certain bond information may be requested of all Bidders by inclusion of a Bond Information Form in the Bid Forms.

2. The party to whom the contract is awarded will be required to present forthwith the name of the surety company to be offered and to execute the contract and furnish the bond duly executed by a satisfactory surety company, within the time limit stated in the bid form after notification that the contract is ready for signature.
3. In case the party to whom the contract is awarded shall fail or neglect to execute the contract and furnish a satisfactory bond within the time specified, the Awarding Authority may determine that the Bidder has abandoned the contract and thereupon the proposal and acceptance shall be null and void, and the bid deposit accompanying the bid shall be forfeited to and retained by the Awarding Authority as liquidated damages for such failure and neglect, and to indemnify the Awarding Authority for any loss which may be sustained by failure of the Bidder to execute the contract and furnish bond as aforesaid. After the execution of the contract and the acceptance of the bond by the Awarding Authority, the bid deposit of the Successful Bidder shall be returned.

#### K. OTHER FORMS REQUIRED AT CONTRACT EXECUTION

1. Insurance certificates for the General Contractor and Filed Sub-Contractors.
2. Estimated Progress Payment Schedule.
3. Form of Sub-Contract executed and submitted for:
  - a. Filed Sub-Contractors
4. Statement of Management on Internal Accounting Controls and a Statement prepared by a CPA expressing an opinion to the state of Management Controls, as required by M.G.L. Chapter 30, Section 39R.
  - a. For General Contractor
  - b. For Subcontracts and purchase orders with a value of \$100,000 or more.

#### L. ALTERNATES

1. All Bidders shall include a price for each Alternate. The prices given shall be total prices and shall include all costs for bonding, insurance, overhead and profit, or any other costs. If no change in the Base Bid is required, enter "No Change". Refer to drawings and Section 01030 - Alternates - for description of scope.

#### M. DAMAGES

1. The work shall commence at the time stated in the notice to the Contractor to proceed. Notice to proceed may be given to the successful General Bidder on any date after the Bidder has executed the General Contract and furnished the General Performance and Payment Bonds with all insurance herein requested and otherwise specified and/or required. The Contractor acknowledges that delay in completion of the Work by the substantial completion date resulting in delay of delivery of the facilities and site by such date in the condition specified for the Work will cause delay in use by the Owner of the school facilities and site and will cause various losses to the Owner, which may include without limitation increased administrative, engineering, construction management and construction costs. Therefore, the Contractor further acknowledges that its obligation to complete the work by the specified date and deliver completed the work by such date is of the essence. In the event the contractor fails to achieve substantial completion of the work by the substantial completion date, the contractor shall pay to the Owner as liquidated damages the sum of one thousand dollars (\$1,000.00) per day for each and every day thereafter that it fails to deliver such Work completed according to the requirements of the Contract Documents. Such liquidated damages shall be paid not as a penalty, but to partially cover losses and expenses to the Owner, including intangible costs and losses that are or may be impracticable to ascertain. Allowing the Contractor to continue to finish the work (or any portion of the work) after the time

11.3 Project Management Protective Liability Insurance.

11.3.1 Replace first (8) words with "Contractor shall." Delete second sentence.

11.3.3 Delete

11.4 Property Insurance.

11.4.1 In the first line, change the word "Owner" to "Contractor."

11.4.1.2 Delete

11.4.1.3 Delete

11.4.2 In the first line, change the word "Owner" to "Contractor."

11.4.4 Delete

11.4.5 Delete

11.4.6 Delete

11.4.7 Delete

11.4.8 Delete the first sentence of subparagraph 11.4.8.

11.4.9 Delete, and substitute the following: The Owner shall have the power to adjust and settle with its insurers any loss for which it has obtained insurance.

11.4.10 Delete, and substitute the following: Upon the occurrence of an insured loss, the Owner and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If after such a loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

11.5 Performance Bond and Labor and Material Payment Bond

Change 11.5.1 to read:

11.5.1 The Contractor shall furnish a performance bond for the full amount of the Contract, and also a labor and materials payment bond for the full amount of the Contract, the form of which bonds are set forth in the Contract Documents, each of a surety company qualified to do business under State laws and satisfactory to the Owner, the premiums for which are to be included in the Contract Price and paid by the Contractor. These bonds shall remain in effect for the entire guarantee period for each phase of the work, which shall commence on the date of Substantial Completion, as defined in Paragraph 8.1.3.

12. UNCOVERING AND CORRECTION OF WORK

12.2 Correction of Work

12.2.1.1 Add at the end of subparagraph 12.2.1.1: The Contractor shall bear the cost of any cost, loss, or damages to the Owner resulting from such failure or defect."

12.2.2.1 Delete words "unless the owner has previously given the Contractor a written acceptance of such condition." from the end of the first sentence.

Delete the third sentence in its entirety.

Add the following new subparagraphs:

12.2.2.1.1 The Contractor shall deliver to the Owner, before final payment is made on the Contract, a written Maintenance Guarantee, properly sworn to and signed by a responsible officer of the Contractor's firm,